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SAADAT, individually and on behalf of a class of
similarly situated individuals

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ARUTYUN MARSIKYAN, and PAYAM
SAADAT, individually and on behalf of a
class of similarly situated individuals,

Plaintiffs,

v.

MERCEDES-BENZ USA, LLC,

Defendant.

NO. CV08-04876 AHM (FMOx)

Assigned for All Purposes To:
Judge: A. Howard Matz - Courtroom
14

Date Action Filed: June 5, 2008
Trial Date: None

CLASS ACTION

**PLAINTIFFS' FIFTH AMENDED
COMPLAINT FOR:**

1. **BREACH OF EXPRESS
WARRANTIES;**
2. **VIOLATION OF STATE
CONSUMER PROTECTION
STATUTES;**
3. **BREACH OF IMPLIED
WARRANTY OF
MERCHANTABILITY**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Arutyun Marsikyan and Payam Saadat ("Plaintiffs") bring this class
2 action on behalf of themselves and all similarly situated persons who purchased or
3 leased certain defective Mercedes Benz S-Class W-220 platform vehicles and
4 Mercedes Benz CL Class W 215 platform vehicles manufactured and sold in the
5 United States by Defendant Mercedes Benz USA, LLC (hereinafter "Mercedes
6 Benz" or "Defendant").

7 INTRODUCTION

8 1. Mercedes Benz designed, manufactured, distributed, sold and leased
9 Mercedes Benz S-Class W220 platform vehicles and CL Class W 215 platform
10 vehicles for model years 2001 to 2006 (the "Class Vehicles") to Plaintiffs and Class
11 Members nationwide.

12 2. At the time of sale or lease, the Class Vehicles were all equipped with a
13 defective Air Intake System ("AIS" or "AIS System"). The AIS provides fresh air for
14 the air conditioning system of the Class Vehicles. The Class Vehicles' AIS are
15 uniformly and inherently defective in materials, design, and workmanship because
16 they fail to prevent leaves, twigs, and other objects from entering the AIS, as
17 explained in greater detail below. This failure causes the AIS to clog-up with water
18 during rain or when the vehicle is washed. The water enters the vehicle's climate
19 control system, and ultimately enters the cabin area of the Class Vehicles, resulting
20 in substantial electric failure and damage due to the water damaging the computer,
21 electrical system, and interior components of the Class Vehicles.

22 3. The Class Vehicles present a safety hazard and are unreasonably
23 dangerous to consumers because of the danger of catastrophic engine and electrical
24 system failure as a result of the flooding of the AIS with water while the vehicle is in
25 operation. Due to electrical and other problems, the vehicle may be unsafe to drive
26 due to water damage.

27 4. In addition, the cost of the AIS defect to consumers can be exorbitant
28 because consumers will be required to pay hundreds, if not thousands of dollars, both

1 to modify the defective AIS, and to repair the damage to the electrical system, the
2 computer system, and other damage which will occur as a result of flooding, which
3 will occur due to the defective AIS system.

4 5. Mercedes Benz knew or should have known that the AIS of the Class
5 Vehicles are defective and not fit for their intended purpose. Nevertheless, Mercedes
6 Benz has actively concealed and failed to disclose this defect to Plaintiffs and the
7 Class Members at the time of purchase or lease and thereafter.

8 6. Furthermore, unknown to most Class Members, Mercedes Benz has
9 engaged in unfair and selective reimbursement practices where it offers to pay,
10 among other things, for the AIS defect and extend consumer's warranties. Mercedes
11 Benz only provides compensation for the AIS defect to some consumers who
12 complain loudly enough, however, and it does so pursuant to a systematic practice
13 that results in disparate warranty treatment among its customers. For example,
14 Defendant refused to pay/reimburse Plaintiffs for the costs associated with the
15 clogging and flooding that occurred as a result of the AIS failure, which occurred
16 during their vehicle's New Car Warranty, while Defendant has paid and/or
17 reimbursed other noisy consumers who continuously persisted and demanded either
18 payment or reimbursement.

19 7. Mercedes Benz has failed to inform the general public and all people
20 who purchased Class Vehicles that it offers to pay, among other things, for the AIS
21 defect and related damage. Moreover, MBUSA fails to inform prospective
22 purchasers of Class Vehicles of the unfair and selective reimbursement practice. The
23 net result of MBUSA's unfair and selective reimbursement practice is that only a
24 fraction of Class Vehicle owners are notified of and/or benefit from the selective
25 reimbursement practice. Consequently, Class Members purchased and continue to
26 purchase Class Vehicles when they otherwise would not, and Class Members paid
27 and continue to pay for repairs that, unbeknownst to them, are covered by MBUSA's
28 unfair and selective reimbursement practice. Because of the latent nature of the AIS

1 defect and MBUSA's pattern of failing to disclose, concealing, and/or misleading
2 purchasers of Class Vehicles about the existence of its unfair and selective
3 reimbursement practice, Class Members pay for repairs that should be covered by
4 MBUSA's selective reimbursement practice.

5 8. In addition, as early as 2001, upon information and belief, while
6 Defendant repeatedly refused to pay the cost of replacing and/or modifying the
7 defective AIS under the Class Vehicle's New Car Warranty, Defendant issued a
8 written notice to its authorized dealers in which it implemented a cheaper, albeit
9 temporary fix: namely a method of clearing, at no cost to consumers, for only one
10 time the AIS' reed valve, rather than replacing and/or modifying the defective AIS
11 under warranty. Defendant offered the reed valve clearing for some Class Vehicles
12 and for only those customers who made a service visit to its dealerships.

13 9. The AIS clearing was a temporary fix because, among other things, it
14 was not conducted on a continuing basis and as part of the Class Vehicles routine
15 maintenance schedule.

16 10. In fact, Defendant has failed to include the reed valve clearing as a
17 maintenance item in the Class Vehicles' maintenance booklet. In addition,
18 Defendant's failure to inform all Class Members, including Plaintiffs, about the one
19 time reed valve clearing has resulted in disparate warranty treatment among its
20 customers.

21 11. Plaintiffs are informed and believe that Defendant is aware, and has
22 been aware since 2001, if not before, that the one time AIS valve clearing does not
23 fix the AIS defect. Rather, the one time AIS valve clearing simply prolongs the
24 amount of time that will elapse before the AIS fails, to ensure that the AIS fails
25 outside of warranty, so that Defendant can unfairly shift financial responsibility for
26 the AIS defect on to consumers.

27 12. Despite notice of the defect from numerous consumer complaints,
28 dealership repair orders, as well as various other sources, Mercedes Benz has not

1 recalled the Class Vehicles to repair the defect, has not offered all its customers a
 2 suitable repair, modification, or replacement of the AIS free of charge, and has not
 3 offered to reimburse Class Members who incurred costs relating to flooding which
 4 has occurred as the result of the defective AIS. Moreover, upon information and
 5 belief, in 2005, Mercedes Benz issued an internal bulletin acknowledging that the
 6 defective AIS system could be repaired, and provided in this bulletin a design for the
 7 fixes necessary to temporarily repair the AIS system which it implemented on some
 8 Class Vehicles.

9 13. As a result of Defendant's misconduct alleged herein, Plaintiffs and
 10 Class Members have been harmed and have suffered actual damages in that the AIS
 11 in the Class Vehicles are experiencing continuous and progressive failure problems,
 12 and the AIS' have failed and will continue to fail before their expected useful life has
 13 run.

14 THE PARTIES

15 The Plaintiffs:

16 14. Plaintiff Arutyun Marsikyan ("Marsikyan") is a California citizen who
 17 resides in Los Angeles County, California. Marsikyan purchased a new 2006
 18 Mercedes S-430 in May of 2006. This vehicle was purchased primarily for personal,
 19 family or household purposes. This vehicle was manufactured, sold, distributed,
 20 advertised, marketed and warranted by Mercedes Benz, and bears the Vehicle
 21 Identification No. WDBNG70J66A468562.

22 15. In January of 2008, with approximately 18,241 miles on the odometer,
 23 Marsikyan sustained water related damage to his Class Vehicle when the vehicle's
 24 climate control system was flooded with water as a result of the of the AIS defect
 25 mentioned herein. As with all other Class Members, MBUSA never informed Mr.
 26 Marsikyan, through the subject vehicles' maintenance booklet or other sources, about
 27 the need to clear the reed valve on the Class Vehicles.

28 16. On January 30, 2008, when Marsikyan brought the vehicle into a

1 Mercedes Benz authorized dealer, Calstar Motors, Inc., in Glendale, California, he
 2 was informed that the cost of repair to the AIS and the AIS related damage was
 3 approximately \$6,113.15. Marsikyan was further advised by Calstar Motors, Inc.,
 4 that the said damage was not covered under the vehicle's 4 year 50,000 miles New
 5 Car Warranty.

6 17. Marsikyan Declaration, as required under Cal. Civ. Code section
 7 1780(c), which reflects that Mercedes Benz's principal place of business is in Los
 8 Angeles County, California, is attached as Exhibit 1.

9 18. On January 17, 2005, Plaintiff Payam Saadat ("Saadat") purchased a
 10 new 2004 Mercedes Benz S-500 from Mercedes Benz of Beverly Hills, Vehicle
 11 Identification Number WDBNG75J84A421698. This vehicle was purchased
 12 primarily for personal, family or household purposes. This vehicle was
 13 manufactured, sold, distributed, advertised, marketed and warranted by Mercedes
 14 Benz. As with all other Class Members, MBUSA never informed Mr. Saadat,
 15 through the subject vehicles' maintenance booklet or other sources, about the need to
 16 clear the reed valve on the Class Vehicles.

17 19. In February of 2008, with 13,792 miles on the odometer, Saadat brought
 18 the vehicle into a Mercedes Benz authorized dealer, Mercedes Benz of Beverly Hills,
 19 and was advised that the cost of repair to the AIS and AIS related damage was
 20 approximately \$4,558. Saadat was further advised by Mercedes Benz of Beverly
 21 Hills, that the said damage was not covered under the vehicle's 4 year 50,000 miles
 22 New Car Warranty.

23 20. Sadaat's Declaration, as required under Cal. Civ. Code section
 24 1780(c), which reflects that Mercedes Benz's principal place of business is in Los
 25 Angeles County, California, is attached as Exhibit 2.

26 **The Defendant:**

27 21. Mercedes Benz is a corporation organized and in existence under the
 28 laws of the State of New Jersey and registered with the California Department of

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1 Corporations to conduct business in California. At all time relevant herein, Mercedes
 2 Benz was engaged in the business of designing, manufacturing, constructing,
 3 assembling, marketing, and selling automobiles and other motor vehicles and motor
 4 vehicle components in Los Angeles, County and throughout the United States of
 5 America.

6 JURISDICTION

7 22. This is a class action.

8 23. Members of the proposed Plaintiffs' Class are citizens of states other
 9 than the home state of Defendant.

10 24. On information and belief, aggregate claims of individual Class
 11 Members exceed \$5,000,000.00, exclusive of interest and costs.

12 25. Jurisdiction is proper in this Court pursuant to 28 U.S.C. Section
 13 1332(d).

14 26. This Court also has general and specific jurisdiction over MBUSA, as
 15 MBUSA was engaged in unfair business practices directed at/or causing injury to
 16 persons residing, located or doing business in the United States.

17 VENUE

18 27. Defendant through its business of distributing, selling, and leasing its
 19 vehicles, has established sufficient contacts in this district such that it is subject to
 20 personal jurisdiction here. Defendant is deemed to reside in this district pursuant to
 21 28 U.S.C. section 1391(a).

22 28. In addition, a substantial part of the events or omissions giving rise to
 23 these claims and a substantial part of the property that is the subject of this action are
 24 in this district.

25 29. Venue is proper in this Court pursuant to 28 U.S.C. section 1391(a).

26 FACTUAL ALLEGATIONS

27 The Mercedes Benz Has A Defective Air Intake System

28 30. For years, Mercedes Benz has designed, manufactured, distributed,

1 marketed, sold and leased Class Vehicles. Upon information and belief, it has sold,
2 directly or indirectly through dealers and other retail outlets, thousands of Class
3 Vehicles in California and nationwide.

4 31. The Class Vehicles contain a climate control system which is equipped
5 with a defective AIS that is shaped like a box and located under the hood on the
6 passenger side. The purpose of the AIS is to obtain fresh air from outside the vehicle
7 to use in the climate control system. There is a grate located on the top of the box,
8 which is designed to prevent leaves and other objects from entering the box. One side
9 of the box is mounted to the firewall of the vehicle, where it meets an air filter. Air
10 flows through the filter and travels into the climate control system. At the bottom of
11 the box there is a reed valve. The reed valve serves as a drain, so that during the rain,
12 or when the vehicle is washed, when water enters the box through the grate, it will
13 drain through the reed valve.

14 32. The grate on top of the vehicle is not fine enough to prevent some
15 leaves, twigs, and other objects from entering the AIS box. The reed valve is smaller
16 and more restrictive than the grate, and as such is susceptible to being clogged by
17 objects that enter the box through the grate. As a result, many consumers have
18 experienced reed valve clogging. If the reed valve clogs, the AIS fills with water
19 during a rain or when the vehicle is washed and enters the climate control system.
20 When this occurs, many vehicles have suffered substantial electric failure, engine
21 failure, and other damage, due to water damaging the computer and electrical system.

22 33. Mercedes Benz has been aware of this problem since 2001, if not
23 earlier, and has issued a notice to its authorized dealerships, but not Class Members,
24 which recommends that the AIS' reed valve should be cleared only once during the
25 ownership of the vehicle. Mercedes Benz's remedy of clearing the reed valve once is
26 not sufficient and does not resolve this problem. Furthermore, Mercedes Benz fails to
27 warn customers about the need to clear the reed valve, about the fact that the AIS has
28 a design defect making the vehicle susceptible to flooding, or about the possibility of

1 the reed valve clogging, resulting in vehicle flooding.

2 34. Mercedes Benz through its own testing, records of customer complaints,
3 dealership repair orders, as well as various other sources, was well aware and knew
4 of the defect contained in the AIS of the Class Vehicles. In fact, consumers have
5 reported the defect contained in the AIS of the Class Vehicles to Mercedes Benz
6 directly and through its dealers.

7 35. Defendant knew that its Class Vehicles and AIS were defectively
8 designed or manufactured, would fail prematurely and were not suitable for their
9 intended use.

10 36. Defendant was under a duty to Plaintiffs and the Class to disclose the
11 defective nature of the AIS because:

12 a. Defendant had exclusive knowledge or was in a superior position
13 to know the true state of facts about the safety defect in the Class Vehicles' AIS;

14 b. Plaintiffs and Class Members could not reasonably have been
15 expected to learn or discover that the AIS' had a dangerous safety defect until
16 manifestation of the failure and

17 c. Defendant knew that Plaintiffs and the Class Members could not
18 reasonably have been expected to learn or discover the safety defect.

19 37. In failing to disclose the AIS defect, Defendant has knowingly and
20 intentionally concealed material facts and breached its duty not to do so.

21 38. The facts concealed or not disclosed by Defendant to Plaintiffs and the
22 Class are material in that a reasonable consumer would have considered them to be
23 important in deciding whether to purchase Defendant's Class Vehicles or pay a lesser
24 price. Had Plaintiffs and the Class know the defective nature of the AIS, they would
25 not have purchased the Class Vehicles or would have paid less for them.

26 39. Plaintiffs and the Class reasonably expected the AIS to function
27 properly for the life of their vehicles. That is the reasonable and objective consumer
28 expectation for vehicle AIS'.

1 40. As a direct and proximate result of Defendant's unfair or deceptive acts
2 or practices, Plaintiffs and the Class have suffered and will continue to suffer actual
3 damages.

4 41. Moreover, Mercedes Benz issued an internal bulletin in 2005, setting
5 forth an alternative design of the AIS which would temporarily rectify the defective
6 AIS. Mercedes-Benz implemented this bulletin on some Class Vehicles that suffered
7 water damage.

8 42. Despite this, however, Mercedes Benz has actively concealed the
9 existence and nature of the defect from Plaintiffs and Members of the Class at the
10 time of purchase or lease and thereafter. Specifically, Mercedes Benz has:

11 a. Failed to disclose, at and after the time of purchase or lease and
12 repair, any and all known material defects or material nonconformity of the Class
13 Vehicles, including the AIS' defective nature;

14 b. Failed to disclose at the time purchase or lease that the Class
15 Vehicles, including the AIS of the Class Vehicles, were not in good working order,
16 were defective and were not fit for their intended purpose and

17 c. Failed to disclose or actively concealed the fact that the AIS of
18 the Class Vehicles were defective, despite the fact that Defendant learned of such
19 defects thorough consumer complaints as early as 2001, if not before.

20 43. Defendant has caused Plaintiffs and Members of the Class to expend
21 money at its dealerships or other repair facilities repairing, modifying, or replacing
22 the defective AIS and the resulting damages, despite Defendant's knowledge of the
23 defect.

24 44. Mercedes Benz has failed and refused to recall, repair, correct or
25 adequately service Class Vehicles' defective AIS, instead instructing its dealers to
26 conduct a one time cleaning of the AIS, that does nothing to permanently rectify the
27 problem, while at the same time refusing to notify owners of Class Vehicles of the
28 nature of the defect existing in their Class Vehicles. Furthermore, Mercedes Benz has

1 refused to pay for the damages that have been sustained to Class Vehicles as a result
2 of this defect.

3 45. The Members of the Class have not received the value for which they
4 bargained when they purchased or leased the Class Vehicles.

5 46. As a result of the defects, the value of the Class Vehicles has
6 diminished, including without limitation re-sale value.

7 **TOLLING OF THE STATUTE OF LIMITATIONS**

8 47. Since the defects in the design or manufacture of the Class Vehicles and
9 their AIS cannot be detected until the defect manifests, Plaintiffs and the Class were
10 not reasonably able to discover the problem until long after purchasing or leasing the
11 Class Vehicles, despite their exercise of due diligence.

12 48. Plaintiffs and the Class Members had no realistic ability to discern that
13 the AIS was defective until it failed. In addition, despite their due diligence,
14 Plaintiffs and the Class Members could not reasonably have been expected to learn
15 or discover that they were deceived and that material information concerning the AIS
16 was concealed from them, until manifestation of the failure. Therefore, the discovery
17 rule is applicable to the claims asserted by Plaintiffs and the Class Members.

18 49. Moreover, MBUSA is under a continuous duty to disclose to the
19 plaintiffs and the Class the true character, quality, and nature of the Class Vehicles
20 and to disclose the existence of the defect and its unfair and selective reimbursement
21 practice. MBUSA knowingly, affirmatively, and/or actively concealed the true
22 character, quality, and nature of (i) the defect at issue, and (ii) its unfair and selective
23 reimbursement practice, which concealment is ongoing, and did not disclose the
24 existence of the selective reimbursement practice. Furthermore, Plaintiffs reasonably
25 relied upon MBUSA's knowing, affirmative, and/or active concealment. Based on
26 the foregoing, MBUSA is estopped from relying on any statutes of limitation in
27 defense of this action.

28 50. The causes of action alleged herein did or will accrue only upon

1 discovery of the latent defect, the unfair and selective reimbursement practice, and
 2 MBUSA's fraudulent concealment thereof. Plaintiffs and members of the Class did
 3 not discover and could not have discovered through the exercise of reasonable
 4 diligence the true nature of the defect and MBUSA's unfair and selective
 5 reimbursement practice.

6 CLASS ACTION ALLEGATIONS

7 51. Plaintiffs bring this class action pursuant to the provisions of Federal
 8 Rule of Civil Procedure 23, on behalf of themselves and all other persons similarly
 9 situated. This action satisfies the numerosity, commonality, typicality, adequacy,
 10 predominance, and superiority requirements of Rule of Civil Procedure 23.

11 52. The Class and Sub-Class that Plaintiffs seek to represent is defined as:

12 Class: All persons throughout the United States (including Puerto Rico) who
 13 currently own or lease a model year 2001 through 2006 Mercedes-Benz S-
 14 Class (W220) or CL-Class (W215) vehicle.

15 Sub-Class: All persons throughout the United States (including Puerto Rico)
 16 who previously owned or leased a model year 2001 through 2006 Mercedes-
 17 Benz S-Class (W220) or CL-Class (W215) vehicle, and who incurred out-of-
 18 pocket, unreimbursed expenses related to repairs for water damage due to a
 19 clogged reed valve in the air/water duct during the period in which they leased
 20 or owned the vehicle.

21 Excluded from the class are: (1) all prior owners or lessees of the Vehicles who did
 22 not incur out-of-pocket, unreimbursed expenses for repair of water damage due to a
 23 clogged reed valve in the air/water duct during the period in which they leased or
 24 owned the vehicle; (2) the Judge assigned to this case and his or her immediate
 25 family; (3) all individuals or entities claiming to be subrogated to the rights of Class
 26 Members; (4) Vehicles currently owned by or leased to MBUSA, its parents,
 27 subsidiaries, affiliates, authorized Mercedes-Benz dealers, and their officers,
 28 directors and employees; and (5) any individuals with claims for personal injuries.

1 53. Numerosity: There are over 100,000 Class Members in the Class and
2 Sub-Class thereby making joinder impracticable. The disposition of the claims of
3 these Class Members in a single action will provide substantial benefits to all parties
4 and to the Court. The Members of the Class are readily identifiable from information
5 and records in Defendant's possession, custody or control, as well as through other
6 sources.

7 54. Typicality: The claims of representative Plaintiffs are typical of the
8 claims of the Class in that the representative Plaintiffs, like all Class Members,
9 purchased and leased a Class Vehicle designed and manufactured by Mercedes Benz
10 in which the AIS is defective. The representative Plaintiffs, like all Class Members,
11 have been damaged by Defendant's misconduct in that they have incurred or will
12 incur the cost of replacing the AIS or repairing the damage caused by the Class
13 Vehicles and their AIS. Furthermore, the factual bases of Mercedes Benz's
14 misconduct are common to all Class Members and represent a common thread of
15 fraudulent, deliberate and negligent misconduct resulting in injury to all Members of
16 the Class.

17 55. Commonality: There are numerous questions of law and fact
18 common to Plaintiffs and the Class which predominate over any questions affecting
19 only individual Class Members. These common legal and factual issues include the
20 following:

- 21 a. Whether the Class Vehicles and the AIS manufactured by
22 Mercedes Benz are defectively designed or manufactured such that they are not
23 suitable for their intended use;
- 24 b. Whether Mercedes Benz knew or should have known of the
25 inherent design or manufacturing defect in the Class Vehicles;
- 26 c. Whether Mercedes Benz fraudulently concealed from or failed to
27 disclose to Plaintiffs and the Class the inherent problem with the Class Vehicles;
- 28 d. Whether the facts concealed or not disclosed by Defendant to

1 Plaintiffs and the Class are material;

2 e. Whether as a result of Defendant's concealment of or failure to
3 disclose material facts, Plaintiffs and the Class acted to their detriment by purchasing
4 Class Vehicles;

5 f. Whether Defendant should be declared financially responsible for
6 notifying all Class Members of the problems with its Class Vehicles and for the costs
7 and expenses of repair and replacement of Class Vehicles and their AIS;

8 g. Whether the information Defendant concealed or failed to
9 disclose was material;

10 h. Whether Defendant was under a duty to inform Plaintiffs and
11 Class Members about the true defective nature of the AIS;

12 i. Whether Mercedes Benz maintains an unfair and selective
13 reimbursement practice by which it will pay for AIS defect and related damage
14 repairs if a Class Member complains loudly enough;

15 j. Whether Mercedes-Benz had a duty to inform Plaintiffs and Class
16 Members that it will pay for the AIS defect and related damage under certain
17 circumstances;

18 k. Whether Mercedes Benz was under a duty to inform Plaintiffs
19 and the Class about the existence of the AIS defect prior to the expiration of their
20 express warranty;

21 l. Whether Mercedes-Benz breached its express warranty by
22 failing to pay for Plaintiffs' and Class Members' AIS defect and defect related
23 repairs.

24 m. Whether, by its conduct, Mercedes Benz breached the implied
25 warranty of merchantability.

26 56. Adequate Representation: Plaintiffs will fairly and adequately protect
27 the interests of the members of the Class. Plaintiffs have retained attorneys
28 experienced in the prosecution of class actions, including complex employment,

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1 consumer, and product defect class actions, and Plaintiffs intend to prosecute this
2 action vigorously

3 57. Predominance and Superiority: Plaintiffs and the Members of the Class
4 have all suffered and will continue to suffer harm and damages as a result of
5 Defendant's unlawful and wrongful conduct. A class action is superior to other
6 available methods for the fair and efficient adjudication of the controversy. Absent a
7 class action, most Members of the Class would likely find the cost of litigating their
8 claims prohibitively high and would therefore have no effective remedy at law.
9 Because of the relatively small size of the individual Class Members' claims, it is
10 likely that only a few Class Members could afford to seek legal redress for
11 Defendant's misconduct. Absent a class action, Class Members will continue to incur
12 damages and Defendant's misconduct will continue without remedy. Class treatment
13 of common questions of law and fact would also be superior to multiple individual
14 actions or piecemeal litigation in that class treatment will conserve the resources of
15 the courts and the litigants, and will promote consistency and efficiency of
16 adjudication

17 FIRST CAUSE OF ACTION

18 Breach of Express Warranty

19 58. Plaintiffs hereby incorporate by reference the allegations contained in
20 the preceding paragraphs of this complaint.

21 59. Plaintiffs bring this cause of action on behalf of themselves and on
22 behalf of the Members of the Class and Sub-Class.

23 60. The warranty Mercedes Benz provided Plaintiffs and Class Members
24 with the sale or lease of Class Vehicles became part of the basis of the bargain, and
25 therefore constitutes an express warranty. Any limitation in connection with the
26 Class Vehicles' express warranty and its AIS System is unconscionable.

27 61. Defendant sold the Class Vehicles under Mercedes Benz's express
28 warranty. The AIS is a system which is covered under the express warranty. The

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1 warranty provision expressly promises, among other things, that Defendant will
2 repair any defects in materials and workmanship within four years or 50,000 miles,
3 whichever occurs first. The express Warranty language states as follows:

4 **Items Which Are Covered:**

5 DEFECTS: Mercedes Benz USA, LLC (MBUSA) warrants to the
6 original and each subsequent owner of a new Mercedes-Benz
7 passenger car that any authorized Mercedes-Benz Center will make
8 any repairs or replacements necessary, to correct defects in material or
9 workmanship arising during the warranty period.

10 62. Mercedes Benz breached its express warranty to Plaintiffs and the Class
11 by (a) selling Class Vehicles with a defective AIS System that is substantially certain
12 to fail within the useful life of the vehicle; (b) failing to notify Plaintiffs and the
13 Class of the AIS defect so they can have their vehicles inspected and repaired prior to
14 expiration of the express warranty; and (c) failing to pay for Plaintiffs and the Class'
15 AIS defect and the related repairs under the warranty.

16 63. Moreover, when Plaintiffs and other members of the Class contacted
17 Defendant or its authorized agent for repairs during the Class Vehicles' 4
18 year/50,000 miles warranty, Defendant failed to provide and pay for parts or service
19 which corrected the problem under warranty, as required by the terms of the Class
20 Vehicles' express warranty.

21 64. Plaintiffs and the class have suffered substantial economic loss as the
22 direct and proximate result and consequence of the breach of warranty by defendant.

23 65. Defendant's failure to repair or replace the AIS and/or AIS related
24 damage under the terms of the express warranty has caused the warranty to fail for its
25 essential purpose, as a result of which Plaintiffs and the Class are entitled to damages
26 flowing from the breach of express warranty. Plaintiffs and the Class are also
27 entitled to equitable relief, including specific performance, and a declaration that
28 MBUSA breached its written warranties.

SECOND CAUSE OF ACTION

Violation of State Consumer Protection Statutes

66. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

67. Plaintiffs bring this cause of action on behalf of themselves and on behalf of the Members of the Class and Sub-Class.

68. Mercedes Benz knowingly concealed, suppressed, or omitted the material facts from Class Members, including the fact that the Class Vehicles and AIS were defectively designed or manufactured, would fail prematurely and were not suitable for their intended use.

69. In failing to disclose the AIS defect, Defendant has knowingly and intentionally concealed material facts and breached its duty not to do so.

70. Mercedes Benz further knowingly concealed, suppressed, or omitted that it maintains an unfair and selective reimbursement practice whereby it will pay for, among other things, AIS defect and AIS defect related repairs and extend consumers' warranties.

71. Mercedes Benz's use of an unfair and selective reimbursement practice is an unfair business practice in that only a fraction of Class Vehicle owners are notified of or benefit from this selective program. Mercedes Benz has benefitted and continues to benefit from Class Members' payments for repairs that, unbeknownst to them, are covered by Mercedes Benz's unfair and selective reimbursement practice.

72. As a direct and proximate cause of Mercedes Benz's misconduct, Plaintiffs and Class members have suffered ascertainable loss of money or property in that, among other things: (a) they have paid for repairs that should be covered by Mercedes Benz's selective reimbursement practice; and (b) they paid for Class Vehicles that they would not have purchased or leased had they known of the AIS defect.

73. Plaintiffs allege that MBUSA's conduct violates the following state

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1 unfair and deceptive acts and practices laws:

2 a. Alabama Deceptive Trade Practices Act (Ala. Code § 8-19-1 et
3 seq.);

4 b. Alaska Unfair Trade Practices and Consumer Protection Act
5 (Alaska Stat. § 45.50.471 et seq.);

6 c. Arizona Consumer Fraud Statute (Ariz. Rev. Stat. Ann. § 44-1521
7 et seq.);

8 d. Arkansas Deceptive Trade Practices Act (Ark. Code Ann. 4-88-
9 101 et seq.);

10 e. California Consumers Legal Remedies Act (Cal. Civil Code §
11 1750 et seq.) and Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 et seq.);

12 f. Colorado Consumer Protection Act (Colo. Rev. Stat. § 6-1-101 et
13 seq.);

14 g. Connecticut Unfair Trade Practices Act (Conn. Gen. Stat. § 42-
15 110a et seq.);

16 h. Delaware Consumer Fraud Act (De. Code Ann. Tit. 6, § 2511 et
17 seq.) and Delaware Deceptive Trade Practices Act (Del. Code Ann. Tit. 6, § 2531 et
18 seq.);

19 i. District of Columbia Consumer Protection Procedures Act (D.C.
20 Code Ann. § 28-3901 et seq.);

21 j. Florida Deceptive and Unfair Trade Practices Act (Fla. Stat. Ann.
22 § 501.201 et seq.) and Florida False Advertising Statutes (Fla. Stat. Ann. § 817-40 et
23 seq.);

24 k. Georgia Uniform Deceptive Trade Practices Act (Ga. Code Ann.
25 § 10-1-370 et seq.); Fair Business Practices Act (Ga. Code Ann. § 10-1-390 et seq.);
26 and False Advertising Statute (Ga. Code Ann. § 10-1-420 et seq.);

27 l. Hawaii Federal Trade Commission Act (Hawaii Rev. Stat. § 481
28 et seq.) and the Uniform Deceptive Trade Practice Act (Hawaii Rev. Stat. § 481A et

KNAPP,
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& CLARKE

- 1 seq.);
- 2 m. Idaho Consumer Protection Act (Idaho Code § 48-601 et seq.);
- 3 n. Indiana Deceptive Consumer Sales Act (Ind. Code Ann. § 24-5-
- 4 0.5-1 et seq.);
- 5 o. Iowa Consumer Fraud Act (Iowa Code Ann § 714.16);
- 6 p. Kansas Consumer Protection Act (Kan. Stat. Ann. § 50-623 et
- 7 seq.)
- 8 q. Kentucky Consumer Protection Act (Ky. Rev. Stat. § 367.110 et
- 9 seq.);
- 10 r. Louisiana Unfair Trade Practices and Consumer Protection Law
- 11 (La. Rev. Stat. Ann. § 51:1401);
- 12 s. Marine Unfair Trade Practices Act (Me. Rev. Stat. Ann. Tit. 5 §
- 13 206 et seq.) and Uniform Deceptive Trade Practices Act (Me. Rev. Stat. Ann. Tit. 10
- 14 § 1211 et seq.);
- 15 t. Maryland Consumer Protection Act (Md. Com. Law Code Ann.
- 16 §§ 13-101 et seq., 14-101 et seq.);
- 17 u. Massachusetts Consumer Protection Act (Mass. Gen. Laws Ann.
- 18 Ch. 93A);
- 19 v. Michigan Consumer Protection Act (Mich. Comp. Laws Ann. §
- 20 445.901 et seq.) and Michigan Pricing and Advertising Act (Mich. Comp. Laws Ann.
- 21 § 445.351 et seq.);
- 22 w. Minnesota Consumer Fraud Act (Minn. Stat. Ann. § 325 F. 69);
- 23 the False Statement in Advertisement Statute (Minn. Stat. Ann. § 325 F. 67); the
- 24 Uniform Deceptive Trade Practices Act (Minn. Stat. Ann. § 325D.44; and the
- 25 Unlawful Trade Practices Act (Minn. Stat. Ann. § 325D.13);
- 26 x. Mississippi Consumer Protection Act (Miss. Code Ann. § 75-24-1
- 27 et seq.) and False Advertising Statutes (Miss. Code Ann. § 97-23-3);
- 28 y. Missouri Merchandising Practices Act (Mo. Rev. Stat. § 407.020

1 et seq.);

2 z. Montana Unfair Trade Practices and Consumer Protection Act
3 (Mont. Code Ann. § 30-14-101 et seq.) and Statutory Deceit Statute (Mont. Code
4 Ann. § 27-1-712);

5 aa. Nebraska Consumer Protection Act (Neb. Rev. Stat. § 59-1601 et
6 seq.) and Nebraska Uniform Deceptive Trade Practices Act (Neb. Rev. Stat. § 87-
7 301 et seq.);

8 bb. Nevada Deceptive Trade Statutes (Nev. Rev. Stat. §§ 598.0903 et
9 seq., 41.600 et seq.);

10 cc. New Hampshire Regulation of Business Practices for Consumer
11 Protection Act (N.H. Rev. Stat. Ann. § 358-A:1 et seq.);

12 dd. New Jersey Consumer Fraud Act (N.J. Stat. Ann. § 56:8-1 et seq.)

13 ee. New Mexico Unfair Practices Act (N.M. Stat. Ann. § 57-12-1 et
14 seq.)

15 ff. New York Consumer Protection Act (N.Y. Gen. Bus. Law §§
16 349, 350);

17 gg. North Carolina Unfair and Deceptive Trade Practices Act (N.C.
18 Gen. Stat. § 75-1.1 et seq.);

19 hh. North Dakota Deceptive Act or Practice Statutes (N.D. Gen. Stat.
20 § 51-15-01 et seq.);

21 ii. Ohio Consumer Sales Practices Act (Ohio Rev. Code Ann. §
22 1345.01 et seq.);

23 jj. Oklahoma Consumer Protection Act (Okla. Stat. Ann. Tit. 15 §
24 751 et seq.) and Oklahoma Deceptive Trade Practices Act (Okla. Stat. Ann. Tit. 78 §
25 51 et seq.)

26 kk. Oregon Unlawful Trade Practices Act (Or. Rev. Stat. 646.605 et
27 seq.) and Oregon Food and Other Commodities Act (Or. Rev. Stat. § 616.005 et
28 seq.);

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1 ll. Pennsylvania Unfair Trade Practices Act and Consumer
 2 Protection Law (Pa. Stat. Ann. Tit. 73 § 201-1 et seq.);
 3 mm. Rhode Island Consumer Protection Act (R. I. Gen. Law § 6-13.1-
 4 1 et seq.);
 5 nn. South Carolina Unfair Trade Practices Act (S.C. Code Ann. § 39-
 6 5-10 et seq.);
 7 oo. South Dakota Deceptive Trade Practices and Consumer
 8 Protection Law (S.D. Codified Laws Ann. § 37-24-1 et seq.);
 9 pp. Tennessee Consumer Protection Act (Tenn. Code Ann. § 47-18-
 10 101 et seq.);
 11 qq. Texas Deceptive Trade Practices Act (Tex. Bus. & Com. Code
 12 Ann. § 17.41 et seq.)
 13 rr. Utah Consumer Sales Practices Act (Utah Code Ann. § 13-11-1 et
 14 seq.) and Utah Truth in Advertising Act (Utah Code Ann. § 13-11a-1 et seq.);
 15 ss. Vermont Consumer Fraud Statute (Vt. Stat. Ann. Tit. 9, § 2451 et
 16 seq.);
 17 tt. Virginia Consumer Protection Act (Va. Code 59.1-196 et seq.);
 18 uu. Washington Consumer Protection Act (Wash. Rev. Code Ann. §
 19 19.86 et seq.);
 20 vv. West Virginia Consumer Credit and Protection Act (W. Va. Code
 21 § 46A-6-101 et seq.);
 22 ww. Wisconsin Fraudulent Representations Act (Wis. Stat. Ann. §
 23 100.18 et seq.); and
 24 xx. Wyoming Consumer Protection Act (Wyo. Stat. § 40-12-101 et
 25 seq.).
 26 74. Plaintiff Marsikyan served Defendant via certified mail with Consumer
 27 Legal Remedies Act notification and demand letters satisfying the requirements of
 28 the California's Consumer's Legal Remedies Act or similar requirements in other

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1 Consumer Protection Statutes. After 30 days of the receipt of the notification letters,
 2 Defendant failed to respond (other than to acknowledge receipt of the letters) and
 3 failed to provide appropriate relief for the violations of the CLRA. Any additional
 4 notice would be futile and unnecessary.

5 **THIRD CAUSE OF ACTION**

6 **Breach of Implied Warranty of Merchantability**

7 75. Plaintiffs hereby incorporate by reference the allegations contained in
 8 the preceding paragraphs of this Complaint.

9 76. Plaintiffs bring this cause of action on behalf of themselves and on
 10 behalf of the Members of the Class and Sub-Class.

11 77. Mercedes Benz's implied warranty of merchantability accompanied the
 12 sale of the Class Vehicles sold to Plaintiffs and Class Members.

13 78. Mercedes Benz is a merchant in the sale of the Class Vehicles to
 14 Plaintiffs and Class Members. Mercedes Benz manufactures, markets, distributes
 15 and sells the Class Vehicles equipped with the defective AIS. Mercedes Benz
 16 provided Plaintiffs and Class Members with an implied warranty that the Class
 17 Vehicles were merchantable and fit for the ordinary purposes for which they were
 18 sold, including but not limited to providing safe and reliable transportation. The
 19 Class Vehicles are not fit for their ordinary purpose because, among other things,
 20 they present a safety hazard and are unreasonably dangerous to consumers because
 21 of the danger of catastrophic engine and electrical system failure that can occur due
 22 to flooding of the defective AIS System with water while the vehicle is in operation.

23 79. The alleged defects are so basic that they render the Class Vehicles unfit
 24 for the ordinary purpose of providing reliable and safe transportation.

25 80. Mercedes Benz knew or had reason to know that Plaintiffs and Class
 26 Members purchased or leased Class Vehicles to obtain safe and reliable
 27 transportation in connection with their operation of the Class Vehicles.

28 81. The Class Vehicles do not conform to the promises and affirmations

1 uniformly issued by Mercedes Benz in its sales materials and warranties, and are not
2 of fair or average quality.

3 82. Plaintiffs and Class Members have used the Class Vehicles for their
4 intended and ordinary purpose of providing transportation.

5 83. Plaintiffs and Class Members have performed each and every duty
6 required under the terms of the warranties, except as may have been excused or
7 prevented by the conduct of MBUSA or by operation of law in light of MBUSA's
8 unconscionable conduct, including MBUSA's acts of concealment and failure to
9 inform Class Members about its unfair and selective reimbursement whereby it will
10 pay, among other things, for AIS defect repairs and extend consumer's warranties.

11 84. Plaintiffs and Class Members have provided sufficient and timely notice
12 to MBUSA regarding the problems they experienced with the Class Vehicles and,
13 notwithstanding such notice, Defendant has failed and refused to offer Plaintiffs and
14 Class Members an effective remedy. In addition, MBUSA has received, on
15 information and belief, numerous complaints and other notices from consumers
16 advising them of the defects associated with the defective AIS contained in the Class
17 Vehicles.

18 85. By virtue of the conduct described herein, Defendant breached the
19 implied warranty of merchantability.

20 86. Plaintiffs and Class Members have been damaged as a direct and
21 proximate result of Defendant's breach of the implied warranty

22 **RELIEF REQUESTED**

23 Plaintiffs, on behalf of themselves, and all others similarly situated, request the
24 Court to enter judgment against Defendant, as follows:

25 87. An order certifying the proposed Class and Sub-Class, designating
26 Plaintiffs as named representative of the Class and Sub-Class and Plaintiffs counsel
27 as Class Counsel;

28 88. A declaration that Defendant is financially responsible for notifying all

1 Class Members of the problems with its defective AIS;

2 89. Actual damages in an amount to be determined at trial;

3 90. An order enjoining Defendant from further deceptive distribution, sales
4 and lease practices with respect to its Class Vehicles, and to remove and replace
5 Plaintiffs and Class Members' AIS with a suitable alternative product;

6 91. Injunctive relief as plead or as the Court may deem proper;

7 92. Restitution and all other forms of equitable monetary relief;

8 93. An award of attorneys' fees and costs of suit, including expert witness
9 fees, pursuant to California Code of Civil Procedure Section 1021.5, or any other
10 applicable statute, law, or contract; and

11 94. Such other relief as may be appropriate under the circumstances.

12

13 **DEMAND FOR JURY TRIAL**

14 95. Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs demand a trial by jury of
15 any and all issues in this action so triable of right.

16 Dated: December 15, 2009

KNAPP, PETERSEN & CLARKE

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By: 

~~STEPHEN M. HARRIS~~

Attorneys for Plaintiffs

ARUTYUN MARSIKYAN, and

PAYAM SAADAT, individually
and on behalf of a class of similarly
situated individuals

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& CLARKE

EXHIBIT 1

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p. 1

1 Stephen M. Harris (State Bar No. 110626)

smh@kpclegal.com

2 KNAPP, PETERSEN & CLARKE

500 North Brand Boulevard, 20th Floor

3 Glendale, California 91203-1904

Telephone: (818) 547-5000

4 Facsimile: (818) 547-5329

5 Attorneys for Plaintiff ARUTYUN MARSIKIAN,
individually and on behalf of a class of similarly situated
6 individuals7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT10 ARUTYUN MARSIKIAN, individually and
11 on behalf of a class of similarly situated
12 individuals,

13 Plaintiff,

14 v.

15 MERCEDES BENZ USA, LLC, and DOES
1-500, inclusive,

16 Defendants.

) NO.

) DECLARATION OF ARUTYUN
MARSIKIAN

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KNAPP,
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& CLARKE-1-
DECLARATION OF ARUTYUN MARSIKIAN

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By: Aruttyl Marsikan
ARUTTYL MARSIKAN

KNAPP,
PETERSON
& CLARKE

~~STANDARD COMPLAINT~~

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EXHIBIT 2

1 Stephen M. Harris (State Bar No. 110626)
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6 THE LAW OFFICES OF ROBERT L. STARR
23277 Ventura Boulevard
7 Woodland Hills, California 91364-1002
Telephone: (818) 225-9040
8 Facsimile: (818) 225-9042

9 Attorneys for Plaintiff
ARUTYUN MARSIKIAN, individually and on behalf
10 of a class of similarly situated individuals

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13

14 ARUTYUN MARSIKIAN, individually and
on behalf of a class of similarly situated
15 individuals,

16 Plaintiff,

17 v.

18 MERCEDES BENZ USA, LLC, and DOES
1-500, inclusive,

19 Defendants.
20

NO. CV08-04876 AHM (JTLx)

DECLARATION OF PAYAM SAADAT

1 I, PAYAM SAADAT, declare under penalty of perjury as follows:

2 1. I make this declaration based upon my personal knowledge except as to those
3 matters stated herein that are based upon information and belief, which I believe to be true;

4 2. I am over the age of eighteen, a citizen of the State of California, I reside in
5 Beverly Hills, California, and I am a named Plaintiff in this litigation.

6 3. On or about January 17, 2005, I purchased a new 2004 Mercedes Benz S-500
7 from Mercedes-Benz of Beverly Hills, in Beverly Hills, California.

8 4. To the best of my knowledge, based upon information and belief, Defendant
9 Mercedes Benz USA, LLC is a New Jersey Limited Liability Company, with its principal
10 place of business in Montvale, New Jersey. Mercedes Benz USA, LLC conducts business
11 in the state of California, county of Los Angeles, and is domiciled in the state of California
12 at 818 West 7th Street, Los Angeles, California 90017.

13
14 I declare under penalty of perjury under the laws of the United States of America
15 that the foregoing is true and correct. Executed this 28th day of November, 2008, in
16 Beverly Hills, California.

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19 By: 

20 PAYAM SAADAT

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27 KNAPP,
PETERSEN
& CLARKE

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DECLARATION OF PAYAM SAADAT

PROOF OF SERVICE
Marsikian v. Mercedes-Benz USA, LLC
CV08-04876 AHM (JTLx)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action. My business address is 550 North Brand Boulevard, Suite 1500, Glendale, California 91203-1922. On December 15, 2009, I caused the foregoing document(s) described as PLAINTIFFS' FIFTH AMENDED COMPLAINT FOR: 1. BREACH OF EXPRESS WARRANTIES; 2. VIOLATION OF STATE CONSUMER PROTECTION STATUTES; 3. BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY; DEMAND FOR JURY TRIAL to be served on the interested parties in this action as follows:

by placing a true copy thereof enclosed in sealed envelope(s) addressed as stated below:

Derek S. Whitefield, Esq.
Naomi A. Carry, Esq.
Dykema Gossett LLP
333 South Grand Avenue, Suite 2100
Los Angeles, CA 90071

Terri S. Reiskin, Esq.
Eric C. Tew, Esq.
Wallace King Domike & Reiskin, PLLC
2900 K Street NW
Harbourside, Suite 500
Washington, DC 20007

Facsimile No.: 213-457-1850; Tel: 213-457-1800 / 213-457-1777; email:
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pcoleman@dykema.com; Attorneys for
Defendant Mercedes-Benz USA, LLC

Facsimile No.: 202-204-1001; Tel: 202-204-3748 (Reiskin); 202-204-3714 (Tew); treiskin@wallaceking.com; etew@wallaceking.com; Attorneys for Defendant Mercedes-Benz USA, LLC

Robert L. Starr, Esq.
The Law Offices of Robert L. Starr
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Woodland Hills, California 91364-1002

Facsimile: 818-225-9042; Tel: 818-225-9040; Co-Counsel for Plaintiffs

☒ **BY MAIL:** I sealed and placed such envelope for collection and mailing to be deposited in the mail on the same day in the ordinary course of business at Glendale, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 15, 2009, at Glendale, California.

Marlinda Ochoa
(Type or print name)

(Signature)